

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ANDRE LORENZANO

:

vs.

:

FILED ELECTRONICALLY

:

: NO. 3:16-CV-02474

KEVIN KOLLMAN and P.A.

:

MICHAEL GOMES

:

**DEFENDANT, KEVIN KOLLMAN, M.D.'S MOTION TO STAY
DISCOVERY**

AND NOW comes Defendant, Kevin Kollman, M.D., by and through his attorneys, Weber Gallagher, and in support of his Motion to Stay Discovery, respectfully avers the following:

1. *Pro se* Plaintiff, Andre Lorenzano, initiated this action by filing a Complaint on December 15, 2016, followed by an Amended Complaint filed on January 5, 2017, in which he asserts claims sounding in 42 U.S.C. §1983 for the purported “deliberate indifference to a serious medical need” in violation of the Eighth Amendment. (ECF Nos. 1, 36).

2. Shortly after waiving service and filing of entries of appearance on behalf of Dr. Kollman, Moving Defendant filed a Motion for Extension of Time to Answer Plaintiff’s Amended Complaint, which was granted August 10, 2018, giving Moving Defendant until September 28, 2018 to respond to Plaintiff’s Amended Complaint. (ECF Nos. 52-56, 63).

3. On or about September 12, 2018, Plaintiff filed a motion entitled, “Subpoena Motion to Produce Documents Policy and Procedures: From CCS,” in which he broadly asks the Court to issue a subpoena for the undersigned counsel to produce Correct Care Solutions, LLC’s policies and procedures related to medical services. (ECF Nos. 74-75).

4. While Plaintiff has not served Moving Defendant with formal written requests for production of documents pursuant to Fed. R. Civ. P. 26 and 34, it appears from Plaintiff’s recent motion that he is seeking to obtain records from Correct Care Solutions, LLC, the employer of Dr. Kollman at all times relevant to Plaintiff’s Amended Complaint.

5. Moving Defendant Dr. Kollman filed a Motion to Dismiss Plaintiff’s Amended Complaint on or about September 18, 2018.

6. Moving Defendant Dr. Kollman also filed a Motion to Revoke Plaintiff’s *In Forma Pauperis* status on August 7, 2018, which is pending before this Court. (ECF No. 58).

7. Therefore, discovery by request for document production is premature at this juncture of the litigation, as Moving Defendant has sought dismissal of Plaintiff’s Amended Complaint based upon Plaintiff’s failure to state claims for deliberate indifference to a serious medical need pursuant to 42 U.S.C. § 1983.

8. The Third Circuit has routinely held that the purpose of Rule 12(b)(6) is to “enable defendants to challenge the legal sufficiency of complaints without subjecting themselves to discovery.” Mann v. Brenner, 375 Fed. Appx. 232, 239 (3d Cir. 2010).

9. Moving Defendant’s 12(b)(6) Motion, if granted, would dispose of Plaintiff’s claims against Dr. Kollman. As suggested by the 9th Circuit in Rutman Wine Co. v. E. & J. Gallo Winery, 829 F.2d 729, 738 (9th Cir. 1987), the idea that discovery should be permitted before deciding a motion to dismiss “is unsupported and defies common sense.”

10. The time and effort necessary to provide the requested discovery information would be wasted should the Court grant Defendant’s Motion to Dismiss, especially where Plaintiff’s apparent request for production of policy and procedure documents is broad in scope.

11. Moving Defendant avers that no prejudice would befall the Plaintiff by staying discovery until the Court rules upon Defendant’s Motion to Dismiss.

12. Per Local Rule 7.5, Moving Defendant does not intend to file a Brief in support of this Motion, but will do so should the Court deem one desirable.

WHEREFORE, for all of the foregoing reasons, Defendant, Kevin Kollman, M.D., respectfully requests that this Honorable Court enter an Order

staying discovery in this matter pending resolution of Defendant's Motion to Dismiss.

Respectfully submitted,

**WEBER GALLAGHER SIMPSON
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Counsel for Defendant,

Kevin Kollman, M.D.

Date: September 20, 2018

CERTIFICATE OF SERVICE

I, Caitlin J. Goodrich, Esquire, hereby certify that on this date a true and correct copy of the foregoing **MOTION TO STAY DISCOVERY** was sent by first class United States mail, postage prepaid, to the following:

Smart Communications/PADOC
Andre Lorenzano #JA-3640
SCI-Huntingdon
P.O. Box 33028
St. Petersburg, FL 33733

All others via ECF

/S/ Caitlin J. Goodrich
Caitlin J. Goodrich, Esquire

Date: September 20, 2018

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ORDER

And now, this _____ day of _____, 2018, upon
consideration of the Motion to Stay Discovery of Defendant, Kevin Kollman,
M.D., and any response thereto, Defendant's Motion is hereby **GRANTED**.

_____, J.